



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,267	04/22/2005	Pierre Nicolas	3712036.00600	1492
29157	7590	04/05/2011		
K&L Gates LLP P.O. Box 1135 CHICAGO, IL 60690			EXAMINER TRAN LIEN, THUY	
			ART UNIT	PAPER NUMBER
			1789	
			NOTIFICATION DATE	DELIVERY MODE
			04/05/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

chicago.patents@klgates.com

Office Action Summary	Application No. 10/532,267	Applicant(s) NICOLAS ET AL.	
	Examiner Lien T. Tran	Art Unit 1789	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,6-9,13-17 and 20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,6-9,13-17 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The 112 first paragraph rejection is hereby withdrawn because applicant's argument is persuasive.

Claims 1,3,6-9,13-17,20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pruden et al (US2003/0072862A1) in view Huang et al. (WO 02/39820A2) and applicant's admission of prior art.

Pruden et al disclose a bakery composition comprising at least one enzyme selected from an alpha amylase, protease and pentosanase. Pruden et al teach a method of extending the shelf life of the bakery product by adding the bakery composition to the dough or batter. The dough is baked whereupon the extended shelf life is manifested in the baked product. Non-limiting useful examples of the bakery products include cookies, biscuit, waffles, pancake, any cereal based food products etc.... The bakery products are made by use of a leavening agent or without leavening agent. The leavening agent includes sodium bicarbonate. The effective amount of the enzyme ranges from about .21-6 parts by weight of the dough. (see paragraphs 0014,0016, 0017, 0027, 0024,0050)

Pruden et al do not disclose wafer having the humidity as claimed, enzyme in units , the origin of the amylase.

Huang et al disclose a wafer having a humidity of 2%. (see page 9)

Applicant discloses on page 6 of the specification that a typical batter used in the manufacture of commercial flat wafer contains 40-50% flour and common formulations may also comprise at least one of the following ingredients: fat, oi, sugar, sodium bicarbonate, yeast etc..

Art Unit: 1789

Pruden et al disclose the bakery composition comprising at least one enzyme can be added to many different types of bakery products including cookies, biscuit. Wafer is known in the art and defined in the dictionary as small, thin flat cookie or biscuit. Thus, if the composition is added to cookies, it can be added to wafer because wafer is a type of cookie. It would have been obvious to one skilled in the art to add the composition to wafer when desiring to extend the shelf life of the wafer. The generation of in-situ modified starch and the forming of soluble dextrin is an inherent result from the addition of the enzyme before baking. Wafer is known in the art to have low humidity as shown by Huang et al. When a wafer is formed, it would have been obvious to one skilled in the art to make the wafer to have a humidity that is appropriate for such product. It would also have been obvious to add ingredient such as gassing agent because such additive is conventional for wafer as disclosed in the specification. Page 13 of the specification, the concentration of enzyme can range from .00078-.4%. Pruden discloses the amount of enzyme can be from .21-6 part. The process of forming a wafer is so well known in the art and would have been obvious to one skilled in the art when making a wafer. It would have been obvious to obtain the enzyme from any source; all the sources claimed are well known in the art. The new limitation does not define over Pruden. In paragraph 0057, Pruden discloses that the enzymes include amylase, protease and pentosanase and mixtures thereof. Thus, the enzymes include all amylase, protease and pentosanase. the pentosanase includes xylanase.

In the response filed 1/18/11, applicant argues Pruden et al do not disclose the enzyme units as claimed and the amount of .21-6 parts in Pruden is less than the

Art Unit: 1789

amount claimed. This argument is not persuasive. While Pruden does not disclose the enzyme units, the concentration of enzyme disclosed in Pruden falls within the range of enzyme concentration disclosed in the instant specification. Example 2 on page 13 discloses amounts of enzyme ranging from .00078-.4%; the percent of enzyme disclosed in Pruden falls within the range disclosed. Since the enzyme in Pruden is the same enzyme as claimed and the amounts fall within the range disclosed, it is inherent the enzyme units are within the broad range claimed in absence of evidence showing otherwise. Applicant argues the use of enzyme in Pruden is for a different purpose; it is not necessary to show using an ingredient for the same purpose as claimed.

Furthermore, the claims do not recite any property or function relating to the use of alpha amylase. As to the unexpected properties pointed out by applicant, the claims do not recite any property relating to the use of the alpha amylase. Furthermore, Pruden discloses the use of the same enzyme. Applicant has not presented any showing comparing the claimed product versus the product disclosed in the prior art.

As to the lack of disclosure of the enzyme units in Huang, the reference is only relied upon to show the conventional humidity level of wafer.

Applicant's arguments filed 11/18/11 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

Art Unit: 1789

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1789

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

March 25, 2011

/Lien T Tran/

Primary Examiner, Art Unit 1789